

City of Portland, Oregon **Bureau of Development Services**

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Chloe Eudaly, Commissioner Rebecca Esau, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: August 17, 2018 To: Interested Person

Lois Jennings, Land Use Services From:

503-823-2877 or lois.jennings@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

The reasons for the decision are included in the version located on the BDS website http://www.portlandonline.com/bds/index.cfm?c=46429. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 18-197311 TV

GENERAL INFORMATION

George Bitrous Applicant/Contract

P.O. Box 66634 | Portland, OR 97290 Purchaser:

Phone# 503-891-8397 | geobitrous@gmail.com

Owner: Ruth Evie Snively

577 NE Fleming Avenue, Unit C-42 | Gresham, OR 97030

Site Address: 7702 SE 98TH AVE

Legal Description: TL 4800 0.74 ACRES, SECTION 21 1S 2E

Tax Account No.: R992211100 State ID No.: 1S2E21DA 04800

Quarter Section: 3840

Neighborhood: Lents, contact Cora Lee Potter, Land Use Chair, at

cora.potter@gmail.com

Business District: Lents Business Association, contact lentsgrown@gmail.com.

District Coalition: East Portland Neighborhood Office, contact Victor Salinas at 503-823-

6694.

Plan District: Johnson Creek Basin - South

Zoning: R7- Medium Density Single Family Residential Zone with

an "a"-Alternative Design Density overlay

TV- Tree Preservation Plan Violation Case Type:

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The proposal consists of mitigation for removal of a 14-inch dbh Pacific Dogwood tree on the site that was required to be preserved per south subdistrict of Johnson Creek Basin Plan District and through an approved tree preservation plan. The tree preservation plan was

approved through the preliminary land division approval for three lots and an open space tract under land use case file # LU 16-126125 LDS AD. The final plat for this preliminary land division decision is currently under review under final plat case file # 16-126125 FP. The tree removal occurred within the access pole of Lot 3 (Flag Lot), at the time of relocating the driveway for the existing house to be within the access pole. To mitigate for the cut tree, the applicant proposes to plant 5 trees within the open space tract as required by Table 853-1 *Tree Replacement for Violations*.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are 33.853.040.C – Correction to Violations.

ANALYSIS

Site and Vicinity: The site is an interior lot on the east side of SE 98th Avenue. The property slopes upward from the street and levels out at the center of the property where the existing house is located. A mixture of trees are within the front yard area between the street and the house. The site now reflects shrubs and a few trees have been removed along the southern property line. The rear of the property is overgrown with blackberry shrubs with deciduous trees.

The surrounding vicinity is a mixture of two-story and single story single family residences with duplexes mixed in on corner lots and with comparable zoning. Approximately 300-400 feet to the north of the site is Indian Creek Natural Area and approximately 300 feet to the south is the Veterans Creek Natural area. At the time of the site visit, a 5-point buck was in the back yard of this property, which in the future will be the open space tract.

Zoning: The R7 zone is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan polies and designations for single-dwelling housing.

The Johnson Creek Basin Plan District, South Subdistrict regulations are intended to mitigate the negative impacts that result from the development of areas where flooding and landslides are common. The impermeable clay soils of the steep-sided Boring Lava hills to the south of the creek contribute to rapid stormwater runoff in the winter and contribute to flooding. Unlike the flatter areas of the north of the creek, in the South Subdistrict there are numerous streams that can quickly carry stormwater runoff. Limitations on density, tree removal, and impervious surface area reduce stormwater runoff, provide groundwater recharge, reduce erosion, protect water quality, and retain native vegetation. These regulations work together to protect the watershed health while allowing the safe and efficient development of unconstrained lands.

The "a"- Alternative Design Density overlay is intended to allow increased density that meets design compatibility requirements. It fosters owner-occupancy, focuses development on vacant sites, preserves, existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

Lund Use History: City records indicate that prior land use reviews include the following:
LU 16-126125 LDS AD: Approval of a Preliminary Plan for a three (3) lot subdivision which will result in two standard lots, a flag lot and an open space tract. An Adjustment was approved to reduce the required flag lot setback standard from 10 feet to 8.5 feet for the existing house and allow the eave overhang (2 ft.) to project into the reduced set back on the north property line. The Final Plat for this preliminary land division approval is under review currently under file # 16-126125 FP. The tree subject to this violation review was required to be preserved by this land use review.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **July 18, 2018**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 18, 2018. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR TREE REVIEW

33.853.040 Approval Criteria

- C. Corrections to violations. For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation requirements of a land use review, the applicant must show the review body that all of the following approval criteria are met:
 - 1. Mitigation Plan;
 - a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation requirement of a land use review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and
 - b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.

Table 853-1 Tree Replacement for Violation		
Size of tree removed (inches in diameter)	Number of Trees to be Planted	
Up to 12	3 trees	
More than 12 to up to 20	5 trees	
More than 20 to up to 25	7 trees	
More than 25 to up to 30	10 trees	
More than 30	15 trees	

- 2. Replacement trees must be planted as follows:
 - a. On the site where the violation occurred;
 - b. If it is not possible to plant the trees on the site where the violation occurred, then the trees may be planted on other property owned by the applicant within the City of Portland. This includes property owned by a Homeowners' Association to which the applicant belongs;

- c. If it is not possible to plant the trees as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund
- 3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials, unless the mitigation plan calls for different planting specifications to address concerns about plant survival or impacts on the site.

Findings: This review is for violation of a tree preservation plan in accordance with Chapter 33.630, Tree Preservation and a violation of the Tree Removal Standards of Chapter 33.537, Johnson Creek Basin Plan District. The purpose of the regulation that required the preservation plan is as follows:

33.630.010 Purpose

The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;
- Buffering from noise, wind, and storms;
- Providing visual screening and summer cooling;
- Reducing energy demand and urban heat island impacts;
- Filtering stormwater and reducing stormwater runoff;
- Reducing erosion, siltation, and flooding;
- Stabilizing slopes;
- Enhancing property values;
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;
- Providing food for people and wildlife; and
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.

The purpose of the regulation that limits tree removal in the Johnson Creek Basin Plan District is as follows:

33.537.125 Purpose

The regulations of this section limit tree removal to protect the scenic and recreational quality of the Springwater Corridor, reduce stormwater runoff, flooding, erosion, and landslides and protect water quality and native vegetation.

Tree Removal Standards of 33.537 do not allow the removal of trees 6 inches or more in diameter unless one or more of the following is met:

- 1. Trees must be determined by an arborist to be dead, dying or dangerous;
- 2. The tree is on the Nuisance Plants List;
- 3. The tree is within 10 feet of existing or proposed buildings and structures attached to buildings or within 10 feet of a proposed driveway or right-of-way improvements;
- 4. The tree must be removed due to installation, repair, or maintenance of water, sewer, or stormwater services;
- 5. The tree is within a proposed roadway or City-required construction easement;
- 6. The tree is at least 6 and up to 12 inches in diameter and does not meet any of the other standards of the Subsection, but is replaced with two trees.

Trees that do not qualify for removal under C.1 through 6 may be removed if approved through tree review as provided in Chapter 33.853, Tree Review

The applicant proposes to mitigate for the removal of a 14-inch diameter Pacific Dogwood tree by planting five quaking aspen. The applicant has proposed to plant mitigation trees on the

site, which in the future will be the open space tract once the land division, LU 16-126125 LDS AD, is platted.

This site originally contained eighteen trees which provided a total of 396.5 inches of tree diameter, which were subject to the land division tree preservation requirements. In order to meet the tree preservation standard and approval criteria the applicant preserved six (6) trees of the 18 trees and 50 percent of trees which were 20 inches or more in diameter, with a total of 160 inches of total tree diameter. These six (6) trees were chosen over the other 12 trees when considering reasonable development on the future lots, street frontage improvements required along SE 98th Avenue, impacts to trees from the removal and construction of the new driveway and utilities to the existing house.

Staff confirmed on a site visit that all the other five trees required to be preserved per Exhibit C.6 of the land division decision, LU 16-126125 LDS are still being retained. Therefore, 5 of the 6 trees are still on the site, a total 146 tree diameter is remaining, and the tree preservation standard of preserving at least 50 percent of the trees that are 20 or more inches in diameter and at least 30 percent of the total tree diameter on site is still being met.

The LU 16-126125 LDS land division review, required the 14-inch native Pacific Dogwood to be included in the tree preservation plan. Retaining this 14-inch Pacific Dogwood, would result in the driveway location to not be completely constructed in the access pole of the flag, but partially on Lot 2. Access for parking on Lot 2 will be from this driveway also. The native Pacific Dogwood was considered important to be included in the tree preservation since it was a native tree and with tree #27, a spruce, and the previously existing shrubs along the south property line created a screen and buffer to reduce the impact to the adjacent properties.

The 14-inch Pacific Dogwood has been removed, and while the tree replacement required for removing a tree of this size is five trees based on the Violation Table 853-1, the-value in retaining this native tree was greater than the additional value that would be provided by replacement with five trees. The applicant only proposed the minimum number of trees (5) and one species (Quaking Aspen) to mitigate for the loss of this native tree. The removal of a native tree is a violation of the approved tree preservation plan, and the Johnson Creek Basin Plan District –Tree Removal standard and therefore the mitigation of 5 trees and one species type is not adequate towards meeting the purpose of each standard.

This site is within the South Subdistrict of Johnson Creek Basin Plan District boundary as adopted by the City in July of 1991. The property would be considered upland area of the natural resources to be protected. The site is located between a variety of natural resource sites and wildlife migrate through it as a path to these natural resources. On a site visit, birds and a 5-point buck were seen on the rear portion of the site. The loss of this native tree and shrubs along the southern property line created a loss of visual screening and buffer to the adjacent properties. Therefore, the location, number and variety of native tree species need to be considered, to provide for food for this wildlife, and provide visual screening and summer cooling, protect water quality and the other tree benefits described under the purpose statements 33.630.010 and 33.537.125.

To further contribute to the purpose of the regulations, the applicant should be required to plant a combination of at least 7 native small, medium and large canopy deciduous and evergreen trees. A combination of trees will assist with various benefits provided by trees, the small columnar tree will provide screening and buffering, and medium and large trees will provide greater benefits, such as wildlife habitat, shade and increased stormwater absorption. Two of the mitigation trees should be located along the future south lot line of Lot 3 and the remainder of the five mitigation trees should be at the rear of the property within the future open space tract area as shown on Exhibit C.1. Prior to final inspection of the residential permit for relocation of the driveway and utilities a Zoning Permit will be required to plant these mitigation trees on the site. This Zoning Permit is required to document the trees chosen will replace the benefits valued by the tree that was removed, are native and planted in a timely manner. This zoning permit must receive a final inspection by April 1, 2019, or prior to final plat approval of FP 16-126125, whichever occurs first.

In order to ensure the success of the mitigation plantings plants another zoning permit will be required to document the survival of these mitigation plantings two years from the date of the final inspection of the zoning permit to plant these seven (7) native trees.

These mitigation trees will now be considered part of the tree preservation plan since they mitigate the removal of Tree #9. The Tree Preservation plan should be revised to include these mitigation trees to be protected. This new tree preservation plan will replace the original approved tree preservation plan, Exhibit C.6 of LU 16-126125 LDS AD and will be recorded as part of the Acknowledgement of Tree Preservation Land Use Conditions as required by Condition C.11 of LU 16-126125 LDS AD. Development on Lot 3 and the open space tract shall be in conformance with this revised tree preservation plan, which includes protection of these seven native trees. This revised tree preservation plan must be submitted prior to final plat approval of LU 16-126125 LDS AD. The mitigation trees must be shown on the supplemental survey. The open space tract will also be a tree preservation tract, since five of the seven mitigation trees will be planted within it.

The conditions described above for the planting of seven (7) native trees, at least 1.5-inch each small, medium and large canopy deciduous and evergreen replacement trees mitigates for the removal of a 14-inch native Pacific Dogwood.

With the conditions described above, the approval criteria for correcting a tree violation are met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

A tree preservation plan was approved with the preliminary approval of three lots & open space tract land division (LU 16-12625 LDS AD). The 14-inch Pacific Dogwood was one of the trees required to be preserved in the tree preservation plan and required to be retained per the regulations of the South Subdistrict of the Johnson Creek Basin Plan District. The tree was cut by a contractor during preparation for construction of relocating the driveway and utilities for the existing house to be within the future access pole. To address the violation, the applicant will be required to mitigate by planting seven 1.5-inch small, medium and large canopy deciduous and evergreen trees on the site. These mitigation trees will be protected and included in the tree preservation plan. A revised tree preservation plan will be submitted prior to final plat approval of LU 16-126125 FP and replace Exhibit C.6 of LU 16-126125 LDS AD. As addressed in the findings above, the required mitigation will meet the purpose of the Tree Removal Standards of Chapter 33.537, Johnson Creek Basin Plan District and Chapter 33.630, Tree Preservation, and the intent of the original land division decision. The mitigation requirements must be met in conjunction with the final inspection of relocation of the driveway & utilities permit. The mitigation trees must be planted prior to April 1, 2019 or prior to final plat approval, whichever comes first.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a violation resulting from the removal of a 14-inch diameter Pacific Dogwood required to be preserved as part of LU 16-126125 LDS AD and replacing approved Tree Preservation Plan Exhibit C.6 of LU16-126125 LDS AD with a new tree preservation plan which includes these mitigation trees, subject to the following conditions:

- A. Prior to final inspection of the permit for the new driveway for the existing house, the applicant must obtain a Zoning Permit for the required seven mitigation trees.
- B. The Zoning Permit must include seven (7) native trees from the Portland Plant List as follows:
 - No more than two trees can be of the same species.
 - At least two trees must be evergreen
 - At least two trees must be large canopy and no more than three trees may be small canopy.
 - At least three of the seven trees chosen must be noted to provide food for wildlife.
 - Two trees must be planted along the southern property line of Lot 3; the remaining five trees must be planted in the Tract A: Open Space
 - Trees must be planted in the areas shown on Exhibit C.1
- C. As part of the zoning permit application submittal, each of the 4 required site plans and any additional drawings: The sheets on which this information appears must be labeled, "Mitigation Plantings as approved in Case File # LU 18-197311 TV. No field changes allowed."
- D. Prior to April 1, 2019, or prior to final plat approval of LU16-126125 LDS AD, whichever occurs first, the applicant must meet the following;
 - 1. The applicant shall receive final inspection approval of a Zoning Permit to plant the seven native mitigation trees in the areas shown on Exhibit C.1.
 - 2. For the inspection, Tree species tags (common & scientific names) must remain on the trees to verify trees are native from the Portland plant list.
 - 3. Trees must be planted during the time of October 1, 2018 and March 31, 2019.
 - 4. Irrigation for the new planted trees must be provided through Irrigation Options 1, 2 or 3 of Chapter 33.248.040.
 - 5. All tree planting must meet the requirements of Section 33.248.030.
- E. Two years from the date of the Zoning permit inspection approval for the mitigation planting, the applicant shall obtain and final another zoning permit to document that the mitigation trees have survived. If any trees have died, they must be replanted to the approved mitigation planting plan.
- F. Prior to approval of the final plat for LU 16-126125 FP a revised tree preservation plan must be submitted to include these mitigation trees. This new Tree Preservation Plan will replace the tree preservation plans shown as Exhibit C.6 of LU 16-126125 LDS AD and will be included as part of the legal document required by Condition C.11 of LU16-126125 LDS AD.

Staff Planner: Lois Jennings

Decision rendered by: ______ on August 15, 2018

Decision mailed: August 17, 2018

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on July 3, 2018 and was determined to be complete on July 17, 2018.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on July 3, 2018.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. (Unless further extended by the applicant, **the 120 days will expire on: November 14, 2018.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 31, 2018 at** 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at

775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

• *Unless appealed*, the final decision will be recorded after **August 31, 2018** the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

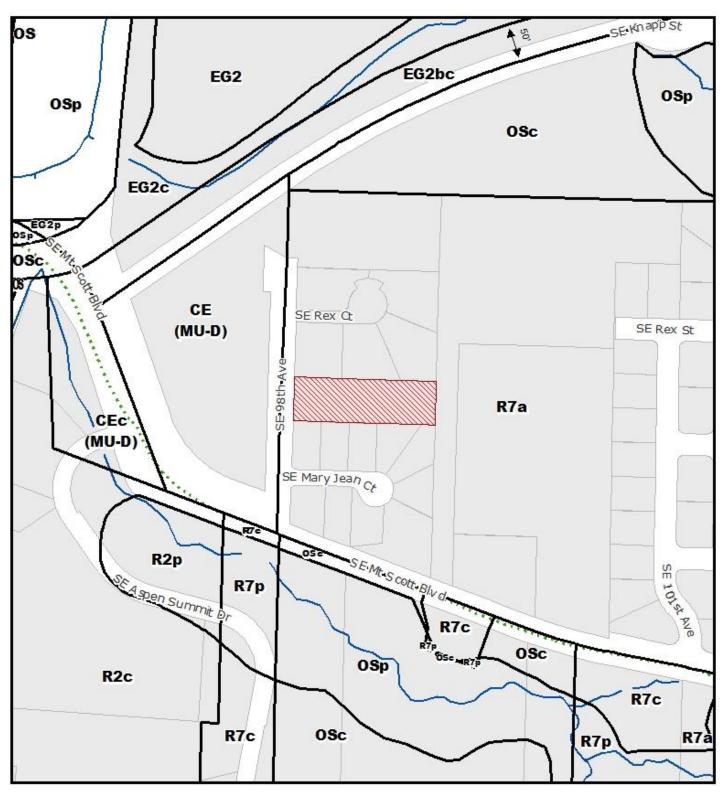
NOT ATTACHED UNLESS INDICATED

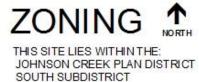
- A. Applicant's Information
 - 1. Applicant's narrative
 - 2. Mitigation Site plan submitted by applicant
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Staff Modified Mitigation Planting Site Plan (attached)
 - 2. Applicant's proposed Mitigation Planting site plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Site Development Review Section of BDS
 - 3. Life Safety Section of BDS
 - 4. Bureau of Parks, Forestry Division
- F. Correspondence: None

G. Other:

- 1. Original LU Application
- Copy of LU 16-126125 LDS AD Decision
 Copy of Original Approved Tree Preservation Plan Exhibit C.6 and Exhibit A.
- 4. Correspondence with applicant

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).







File No.	LU 18-197311	ΓV
1/4 Section	3840	
Scale	1 inch = 200 feet	
State ID	1S2E21DA 4800	
Exhibit	B Jul 10,	2018
7		

